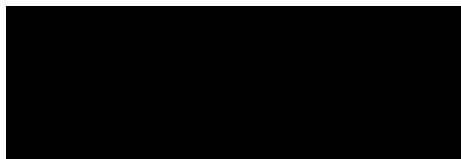




U.S. Citizenship
and Immigration
Services

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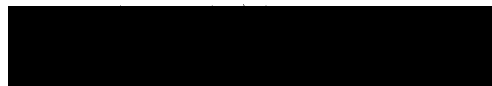


Office: EL PASO, TEXAS

Date:

IN RE:

Applicant:



AUG 09 2004

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application for permission to reapply for admission after deportation or removal was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn and the matter remanded to him for further consideration and action.

The applicant is a native and citizen of Mexico. Information contained in the record of proceeding indicates that on June 1, 1984 the applicant was apprehended in Denver, Colorado and was deported to Mexico on June 7, 1984. On January 22, 1985, the applicant was apprehended on a bus at a checkpoint and falsely represented himself to be a citizen of the United States. On January 31, 1985, he was removed to Mexico pursuant to section 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225. The record reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326.¹ He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States and reside with his spouse and children.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's spouse but does not indicate if the individual mentioned on the Form G-28 is an attorney or an accredited representative. Therefore the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

The District Director determined that sections 212(a)(6)(C)(ii), 212(a)(9)(C) and 241(a)(5) of the Act apply in this matter and the applicant is not eligible and may not apply for any relief under the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director's Decision* dated January 2, 2004.

On appeal, it is stated that since the applicant misrepresented himself to be a U.S. citizen in 1985 he should not be inadmissible under section 212(a)(6)(C)(ii) of the Act, which is a permanent bar. It is further stated that the service is wrong in its interpretation of the Act and that a waiver is available to the applicant.

Several sections of the Act were added and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in *Matter of Soriano*, 21 I&N Dec. 516 (BIA 1996) the provisions of any legislation modifying the act must normally be applied to waiver applications adjudicated on or after the enactment date of the legislation, unless other instructions are provided. The amendment made by section 212(a)(6)(C)(ii) of the Act shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-637) and shall apply to representations made on or after September 30, 1996.

The AAO finds that the District Director erred in concluding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. Since the applicant represented himself to be a U.S. citizen in 1985 he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission into the United States by fraud and willful misrepresentation of a material fact.

¹ It is noted that all this information is contained in the director's decision and nowhere else in the record.

The record of proceedings does not include any documentation to show that the applicant was removed or deported on June 7, 1984 or on January 31, 1985. Additionally, the record does not reflect any documentation to substantiate the District Director's finding that the applicant represented himself to be a U.S. citizen. Absent supporting documentation, the AAO is unable to confirm the District Director's conclusion that the applicant is inadmissible pursuant to sections 212(a)(6)(C)(i), 212(a)(9)(C) and 241(a)(5) of the Act.

CIS Operating Instructions at 103.3(C) provide, in part, that the record of proceeding must contain all evidence used in making the decision. Without the complete record of proceeding and documentary evidence that the applicant represented himself to be a U.S. citizen and was removed or deported from the United States the AAO cannot make a decision on the appeal.

In view of the foregoing, the application will be remanded to the District Director for further action. After preparing a proper record of proceeding the entire record shall be resubmitted to the AAO for review.

ORDER: The matter is remanded to the District Director for further action consistent with the foregoing discussion.